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July 5, 2001

**BOX CPA**  
Commissioner for Patents  
Washington, D.C. 20231

#31

DS  
8-28  
DS

Re: Application of Vincent BRYAN and Alex KUNZLER  
DRILL HEAD FOR USE IN PLACING A VERTEBRAL BODY DISC DEVICE  
Our Ref: A8038

Dear Sir:

This is a request for filing a Continuation Application under 37 C.F.R. § 1.53(d) (continued prosecution application (CPA)) of pending prior Application No. 08/944,234 filed on October 6, 1997 of Vincent BRYAN and Alex KUNZLER entitled DRILL HEAD FOR USE IN PLACING A VERTEBRAL BODY DISC DEVICE.

This application is being filed under 37 CFR § 1.53(d). The prior application, in which no payment of the issue fee, abandonment, or termination of proceedings has occurred, is hereby expressly abandoned as of the filing date of this new application. It is understood that secrecy under 35 USC § 122 is hereby waived to the extent that if information or access is available to any one of the applications in the file jacket, be it either this application or a prior application in the same file jacket, the Patent and Trademark Office may provide similar information or access to all the other applications in the same file jacket.

The prior application is assigned to Group Art Unit 3731

A Preliminary Amendment and a Request for an Interference with a Patent under 37 C.F.R. § 1.607 is being submitted herewith.

There is no claim to priority.

Applicants claim benefit of small entity status in accordance with 37 CFR § 1.27.

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| 02 FC:231 | 355.00 CH |
| 03 FC:203 | 945.00 CH |
| 04 FC:202 | 440.00 CH |

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CPA of USSN 08/944,234  
July 5, 2001

The Government filing fee is calculated as follows:

|                    |            |   |    |   |            |   |         |   |                 |
|--------------------|------------|---|----|---|------------|---|---------|---|-----------------|
| Total claims       | <u>125</u> | - | 20 | = | <u>105</u> | x | \$9.00  | = | <u>\$945.00</u> |
| Independent claims | <u>14</u>  | - | 3  | = | <u>11</u>  | x | \$40.00 | = | <u>\$440.00</u> |
| Base Fee           |            |   |    |   |            |   |         |   | \$480.00        |


**TOTAL FILING FEE** **\$1865.00**

Please charge Deposit Account No. 19-4880 \$1865.00 for the small entity statutory fees. You are also directed and authorized to charge or credit any difference or overpayment to Deposit Account No. 19-4880. The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 and any petitions for extension of time under 37 C.F.R. § 1.136 which may be required during the entire pendency of the application to Deposit Account No. 19-4880. A duplicate copy of this transmittal letter is attached.

A Petition and payment for an extension of time is being filed concurrently herewith in Application No. 08/944,234. The application is timely filed.

Respectfully submitted,

SUGHRUE, MION, ZINN, MACPEAK  
& SEAS, PLLC

  
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Kenneth J. Burchfiel  
Registration No. 31,333

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re application of

Docket No: A8038

Vincent BRYAN and Alex KUNZLER

Appln. No. 08/944,234

Group Art Unit: 3731

Examiner: L. Ngo

Filed: October 6, 1997

For: DRILL HEAD FOR USE IN PLACING A VERTEBRAL BODY DISC DEVICE

PRELIMINARY AMENDMENT

Assistant Commission of Patents  
Washington, D.C. 20231

Dear Sir:

Prior to examination, please amend the application as follows:

IN THE CLAIMS

Please add the following new claims 25-125 as follows:

--25. A device for preparing a space in a human spine to receive an insert between adjacent vertebral bodies, said device comprising:

- (a) an elongated shaft portion;
- (b) a housing disposed at the distal end of said elongated shaft portion;
- (c) a drive means;
- (d) a drive source operably connected to said drive means; and
- (e) a form cutter mountable on said housing and movable by said drive means, wherein:
- (f) said form cutter has at least one milling surface selected to create a surface contour in one of the adjacent vertebral bodies as said form cutter is moved by said drive means.

26. The device of claim 25, wherein said housing is fixedly connected to said elongated shaft portion.

27. The device of claim 25, wherein:

- (a) said housing includes a shaft support; and

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